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09/866,088	05/25/2001	Jere F Irwin	IR3-023	5475

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/866,088

Applicant(s)

IRWIN, JERE F

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10, 17-31 and 33-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 17-31 and 33-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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Claims 1-10, 17-31 and 33-48 are pending, claims 11-16 and 32 have been canceled.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 41 and 46-48 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 41, 46 and 47 recite the limitation of "a plurality of coplanar surfaces, parallel to the bottom wall, are defined in the inside surfaces of the corners" which is not supported by the original disclosure. Claim 47 further states that the coplanar surfaces are only defined in the corners. This is not support by the original disclosure, as well. The claim 48 limitation is not supported, either. **This is a new matter rejection.**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10, 17-31 and 33-48 are rejected under 35 U.S.C. 112, second paragraph, as being unduly multiplied. 37 CFR 1.75(b) states "more than one claim may be presented provided they differ substantially from each other and are not unduly multiplied. An example of the similarity of claims can be seen by comparing claims 37-41 with claims 42-46, there is essentially no difference between these sets of claims.

Mr. Grzelak was called on March 9, 2005 to discuss this multiplicity rejection and was asked to select 20 claims for review on their merits. Applicant responded by phone on March

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14, 2005 but was unwilling to select any claims. In accordance with MPEP section 2173.05(n), applicant is required to select 20 claims for the purpose of examination.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21-25 and 37-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Corelli.

Corelli discloses a container constructed of sturdy, high-impact plastic, the container is lined with an insulating liner 19 made of foam molded polystyrene permanently fixed to the container, the liner is a thermal plastic expanded foam rectangular tray inherently capable of holding meat, the tray includes a bottom and side walls extending upwardly and outwardly from the bottom, each of the side walls has a lower section with an inclined inside surface and an upper section, at least one upper section has internal inclined corner surfaces extending upward and outward to the lip at the four corners, each corner surface subtending an angle greater than an angle subtended by the respective corner, each inclined corner surface forms an obtuse angle with the bottom wall that is less than a corresponding obtuse angle formed between a corresponding lower wall section and the bottom wall. Corelli comprises a rectangular bottom wall, four side walls extending upward and outward from the bottom wall integrally connected to each other at four perpendicular corners, each corner having an inside corner angle of 90 degrees, each of the side walls having an inclined lower section and an upper section that extends upward terminating in a lip that extends outward around the periphery of the tray, the upper wall

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section having an alignment corner surface on an inside surface of each perpendicular corner inclined in a vertical plane and extending upward and outward to the lip at each of the four corners, each alignment corner surface in a horizontal plane comprising a curved arc having an inside corner entrance opening defining an angle or complementary opening angle that is less than 90 degrees, the curved arc defining an angle (for example, a 90 degree angle) that is greater than a respective one of the inside corner angles (for example, an 80 degree angle) and specifically provided to create an increased corner alignment surface area, each alignment corner surface is formed in an indented rib section (as the inner surface of the upper wall section is indented from the rib portion adjacent shoulder 17 of the indented rib portion of the upper wall section, the indented rib portion defined as the horizontal portion adjacent to the shoulder 17 and the substantially upright, inner surface portion of the upper wall section. Note that applicant defines ribs 38 as the top surfaces of steps and that the lowermost rib 38 lies upon the line dividing the upper wall section and the lower wall section.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 10, 17-31, 33 and 37-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corelli in view of Ramirez et al. (Ramirez), Huang et al. ('969), Balzar et al. (Balzar), Reskow and Schubert et al. (Schubert).

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For claims 21-25, this rejection is made if it should be deemed that Corelli doesn't anticipate these claims due to a lack of showing of the dimensional limitations associated with the alignment corner surface.

Corelli discloses the invention except for the curvature of greater than 90 degrees in the corner. Ramirez teaches a plastic foam rectangular tray for food with a bottom and side walls, the side walls have an inclined lower section and an inclined upper section that terminates in an outwardly extending lip, the upper section having internal inclined corner surfaces extending upward and outward to the lip, the inclined corner surfaces are inclined from a vertical line at angle alpha of 15-40 degrees which makes an angle in the range of 105 degrees ( $90 + 15 = 105$ ) to 130 degrees ( $90 + 40 = 130$ ) with the bottom wall. Ramirez teaches a greater than 90 degree curvature in the corner as shown in Fig. 6. Huang discloses a greater than 90 degree curvature in the corner as shown in Fig. 4. Balzar discloses a greater than 90 degree curvature in the corner as shown in Fig. 4. Reskow discloses a greater than 90 degree curvature in the corner as shown in Fig. 8 and 12. Schubert discloses a greater than 90 degree curvature in the corner as shown in Fig. 8. It would have been obvious to modify the tray to have greater than 90 degree curvature to provide a corner which is wider so than the contents do not get trapped into the corner which would impede access and impede through cleaning of the interior of the container's corners. Also, by such modification each alignment corner surface in a horizontal plane comprises a curved arc covering an angle that covers an inside corner angle of more than 90 degrees, but less than 180 degrees to provide a complementary inside corner entrance opening of more than zero degrees, but less than 90 degrees relative to the respective 90 degree inside corner.

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Re claims 3-5, 7 and 8, Corelli discloses the invention except for the exact angle of inclination of the inclined corner surfaces (although it is known to be greater than 90 degrees as shown by the drawing) and the angle of inclination of the lower sections of the side walls (although it is shown to be approximately 120 degrees). It is well known to provide a shallower angle for more access to the top opening in the tray while it is also well known to provide a narrower angle to restrict access. It would have been obvious to modify the angles to be between 94 to 100 degrees for the upper section and the inclined corner surfaces and to be between 110 to 140 degrees for the lower section in order to optimize the access for the upper section and the lower section by design choice.

Claims 1-8, 10, 17-31 and 33-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corelli in view of Ramirez et al. (Ramirez), Huang et al. ('969), Balzar et al. (Balzar), Reskow, Schubert et al. (Schubert) and Hundley.

For claims 21-25, this rejection is made if it should be deemed that Corelli doesn't anticipate these claims due to a lack of showing of the dimensional limitations associated with the alignment corner surface.

For claims 1-8, 10, 17-31 and 33, this rejection is made if it should be deemed that the Corelli, Ramirez, Huang et al. ('969), Balzar, Reskow, and Schubert combination doesn't obviate these claims due to a lack of showing of the indented rib section.

The Corelli, Ramirez, Huang et al. ('969), Balzar, Reskow, and Schubert combination is applied as previously stated. The combination discloses the invention except for the indented rib section. Hundley discloses a food tray having stepped ribs and the indented rib section in the upper wall section. It would have been obvious to add the stepped rib configuration and the

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indented rib section to the combination as motivated by the need to simulate a stadium to enhance the visual appeal of the container. Previous Office actions took Official notice of, "Official notice is taken of well known stepped rib structure. Since applicant hasn't seasonally challenged this notice, it is now specified that applicant admits that stepped rib structure is well known in the prior art. It would have been obvious to add stepped ribs as motivated by the increased strength and reinforcing characteristics associated with stepped ribs.

Claims 2 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over [Corelli in view of Ramirez, Huang et al. ('969), Balzar, Reskow and Schubert] or [Corelli in view of Ramirez, Huang et al. ('969), Balzar, Reskow, Schubert and Hundley] as applied to claim 1 above, and further in view of LaFleur.

Re claim 2, this rejection is made if it should be deemed that limitations directed to the incline of the corner surfaces is not met.

Corelli discloses the invention except for the inside reinforcing ribs of claim 2 and 9, the arc of greater than 90 degrees of claim 6 and the upper section incline of between 110 to 140 degrees. LaFleur discloses a plastic foam rectangular meat tray with a bottom and side walls, the side walls have an inclined lower section and an inclined upper section that terminates in an outwardly extending lip, the upper section having internal inclined corner surfaces extending upward and outward to the lip, the upper sections of the side walls have inside reinforcing ribs formed therein in which the inclined corner surfaces are indented into the ribs at the corners of the side walls. LaFleur teaches upper sections of the side walls inclined at approximately 120 degrees. It would have been obvious to modify the upper sections of the side walls to have inside reinforcing ribs to provide a container that resists buckling. It would have been obvious to



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modify the angle of inclination to be between 110 to 140 degrees to modify the access to the container by design choice.

Applicant's arguments filed January 18, 2005 have been fully considered but they are not persuasive.

Re Corelli and the 102 rejection, applicant argues that the alignment corner surfaces in a horizontal plane comprise a curved arc defining an angle that is greater than a respective one of the inside corner angles. Applicant never specifies which inside corner angle and it can't be determined if the inside corner angle equals 90 degrees or is less than 90 degrees. The examiner has been clear in stating that Corelli has an inside corner angle of many values and that 80 degrees is one value. Therefore, if the angle of the curved arc in a horizontal plane of the alignment corner surface is 90 degrees, then this 90 degree angle is greater than a respective 80 degree inside corner angle.

Re the 103 rejections, these rejections have been made to back-up the 102 rejection should it be deemed that the alignment corner surfaces must be greater than 90 degrees. Applicant concedes that Ramirez teaches an inner surface greater than 90 degrees in Fig. 6. However, applicant believes that there is no teaching or suggestion to combine Ramirez with Corelli and that there is no teaching or suggestion to combine any of the other references with Corelli. In his reasoning, applicant directs attention to the elements of the invention that are missing from the secondary or teaching reference (e.g. Ramirez). This is a moot point since the rejection relies on the primary reference of Corelli for the elements allegedly missing from the secondary references. Corelli and Ramirez are analogous references since both containers are

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food trays. Many of the other references are food trays, as well. All of the containers are molded plastic trays.

Applicant makes comments about not being able to keep track of the references being strung together. Ramirez, Huang ('969), Balzar, Reskow and Schubert all show essentially the same limitation of a greater than 90 degree alignment surfaces. There were many more references that similarly show this greater than 90 degree alignment surfaces limitation. Only one reference is needed to show this single limitation. The examiner chose to provide more than one reference to show this single limitation. The Corelli in view of Ramirez, Huang, Balzar, Reskow and Schubert rejection effectually has only two references being combined.


The Corelli in view of Ramirez, Huang, Balzar, Reskow, Schubert and Hundley rejection effectually has only three references being combined. This rejection has been made to back-up the first 103 rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 571-272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

sjc